

Rochester Tel Center
180 South Clinton Avenue
Rochester, New York 14646-0700

716-777-1028

Michael J. Shortley, III
Senior Corporate Attorney



DOCKET FILE COPY ORIGINAL

RECEIVED

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RECEIVED

APR 19 1993

FCC - MAIL ROOM

April 16, 1993

BY OVERNIGHT MAIL

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: CC Docket No. 93-36

RECEIVED

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

Enclosed for filing please find an original plus nine (9) copies of the Reply Comments of RCI Long Distance, Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Tariff Filing Requirements for)
Nondominant Common Carriers)

CC Docket No. 93-36

REPLY COMMENTS OF
RCI LONG DISTANCE, INC.

RCI Long Distance, Inc.^{1/} submits this reply to the comments received on the Commission's Notice in this proceeding.^{2/} Most parties agree that the Commission should apply maximum streamlined regulation where competitive conditions so warrant.^{3/} Certain parties have raised three principal objections to the Commission's proposals: (1) the Commission may not authorize the filing of maximum rates or ranges of rates;^{4/} (2) the Commission should not permit

-
- 1/ RCI Long Distance, Inc. is an indirect, wholly-owned subsidiary of Rochester Telephone Corporation.
- 2/ Tariff Filing Requirements for Nondominant Common Carriers, CC Dkt. 93-36, Notice of Proposed Rulemaking, FCC 93-103 (released Feb. 19, 1993) ("Notice").
- 3/ E.g., Comptel at 3; MFS at 4-5; Ameritech at 5.
- 4/ AT&T at 3-10; see also Bell Atlantic at 8-9; NYNEX at 5-7.

tariffs of nondominant carriers to become effective on one day's notice;^{5/} and (3) the Commission should prohibit nondominant carriers from referencing, in their tariffs, the rates contained in the tariffs of any other carrier.^{6/} These claims lack merit.

First, the claim -- based largely upon precedent under the Interstate Commerce Act ("ICA") -- that the Commission may not authorize the filing of maximum rates or ranges of rates is incorrect. The courts have made clear that, although the ICA is instructive as to the scope of this Commission's authority under the Communications Act, the scope of the two Acts are not coextensive.^{7/} Moreover, under an analogous statute -- the Natural Gas Act -- the courts have sanctioned the use of banded rates established by the Federal Energy Regulatory Commission.^{8/} The ICA precedent cited by AT&T and others is simply inapplicable to the scope of this Commission's authority under section 203 of the Commission's Act.

5/ See, e.g., NYNEX at 8-10.

6/ Department of Justice at 1-2.

7/ Am. Tel. & Tel. Co. v. FCC, 503 F.2d 612 (2d Cir. 1974); see also Sea-Land Service v. ICC, 738 F.2d 1311, 1318 n.11 (D.C. Cir. 1984).

8/ Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988).

Moreover, nothing in the Communication Act precludes the Commission from permitting nondominant carriers to file ranges of rates or maximum rates. Section 203(a) of the Act requires common carriers to file schedules of their charges.^{9/} Section 203(b)(2) provides that "[t]he Commission may, in its discretion and for good cause shown, modify any requirement" of section 203(a).^{10/} By permitting nondominant carriers to file maximum rates or ranges of rates, the Commission would properly exercise the discretion afforded to it under section 203(b)(2). Such action would not run afoul of the court's conclusion in AT&T^{11/} -- the case in which the court invalidated the Commission's forbearance doctrine -- that the Commission lacks the authority to waive entirely the provisions of section 203(a). By adopting the proposed rule, the Commission would merely be modifying the current tariff rules as they would apply to nondominant carriers.

^{9/} 47 U.S.C. § 203(a).

^{10/} 47 U.S.C. § 203(b)(2) (emphasis added).

The only exception is that the Commission may not extend the tariff notice period of section 203(b)(1) of the Act beyond 120 days. Id.

^{11/} Am. Tel. & Tel. Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

In addition, adoption of such a rule would not undermine any of the policy objectives embodied in the Communications Act. AT&T contends that customers will not be able to know whether they are being subjected to unreasonable

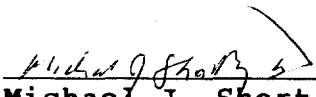
may file formal complaints under section 208 of the Communications Act. Similarly, the Commission itself may investigate the lawfulness of any tariff and order revisions thereto to conform to the requirements of the Communications Act.^{16/} Indeed, that the Commission has been compelled only once to reject a tariff filing of a nondominant common carrier^{17/} strongly suggests that the adoption of a one-day notice period will not undermine any principles embodied in the Communications Act.

Third, the claim that the practice of nondominant carriers of referencing the rates of other carriers inhibits price competition^{18/} is incorrect. Market forces today require smaller interexchange carriers to offer services that may be virtually identical to those offered by larger carriers and to be able to compare their rates to those of the larger carriers. Thus, even if smaller carriers are prohibited from referencing other carriers' rates in their tariffs, such a rule would not preclude the practice of offering services that are

Not only is the proposed rule unworkable, it is also counterproductive. Its principal effect would be to increase the costs incurred by smaller carriers. If cross-referencing rates is prohibited, smaller carriers that offer such discounted services would need to amend their tariffs every time a carrier such as AT&T changes its rates. At four hundred ninety dollars per tariff filing, the proposed rule could significantly increase smaller carriers' costs of doing business. Such a result would actually inhibit price competition.

For the foregoing reasons, the Commission should adopt the proposals set forth in the Notice.

Respectfully submitted,


Michael J. Shortley, III

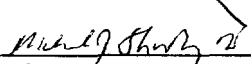
Attorney for RCI Long
Distance, Inc.

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

April 16, 1993

Certificate of Service

I hereby certify that, on this 16th day of April, 1993, the foregoing Reply Comments of RCI Long Distance, Inc. were served by first-class mail, postage prepaid, upon the parties on the attached service list.



Michael J. Shortley, III
Attorney for RCI Long
Distance, Inc.

(2471K)

SERVICE LIST

Michael F. Altschul
V.P. & General Counsel
Michele C. Farquhar
V.P. Law & Regulatory Policy
Cellular Telecomm. Industry Assoc.
Two Lafayette Centre, Suite 300
1133 21st Street, N.W.
Washington, D.C. 20036
(202-785-0081)

Patrick A. Lee
Edward E. Niehoff
New York Telephone Co.
& New England Telephone Tel & Tel
120 Bloomingdale Road
White Plains, NY 10605
(924) 644-5971

Danny E. Adams
Michael K. Baker
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Genevieve Morelli
Vice President & General Counsel
Competitive Telecomm. Assoc.
1140 Connecticut Avenue, N.W.
Suite 220
Washington, D.C. 20036
(202)-296-6650

J. Manning Lee
Senior Regulatory Counsel
Teleport Communications Group
1 Teleport Drive, Suite 301
Staten Island, N.Y. 10311
(718) 983-2671

Donald J. Elardo
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2006

Leon M. Kestenbaum
Michael B. Fingerhut
Marybeth M. Banks
Sprint Communications Co. L.P.
1850 M Street, N.W., Suite 1110
Washington, D.C. 20036
(202) 857-1030

Floyd S. Keene
Mark R. Ortlieb
Attorneys for Ameritech
2000 W. Ameritech Center Drive
Room 4H84
Hoffman Estates, IL 60196-1025

Walter Steimel, Jr.
Fish & Richardson
601 13th Street, N.W.
Fifth Floor North
Washington, D.C. 20005
(202) 783-5070

James P. Tuthill
John W. Bogy
Pacific Bell/Nevada Bell
140 New Montgomery St., Rm. 1530-A
San Francisco, California 94105
(415) 542-7634

James L. Wurtz
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 383-6472

John L. Bartlett
Robert J. Butler
Rosemary C. Harold
Wiley, Rein & Fielding
Attys for Aeronautical Radio, Inc.
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Cindy Z. Schonhaut
Vice President
Government Affairs
MFS Communications Company, Inc.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 944-4209

Andrew D. Lipman
Jonathan E. Canis
Swidler & Berlin, Chartered
Attys for MFS Communications Co., Inc.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Joe Alexander
Two-Way Radio Communications Co. of
Kansas Inc.
41 Western Avenue
P.O. Box 1066
Liberal, Kansas 67905

Terry C. Jenks
Patricia A. Mahoney
Fletcher Heald & Hildreth
1300 N. 17th Street
11th Floor
Arlington, VA 22209

Randall B. Lowe, Esq.
Mark E. Brennan, Esq.

James D. Ellis
William J. Free
Paula J. Fulks
Southwestern Bell Corporation
175 E. Houston, Room 1218
San Antonio, TX 78205
Stuart Dolgin, Esq.

William B. Barfield
Richard M. Sbaratta
Rebecca M. Lough
BellSouth Telecommunications, Inc.
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30367-6000
Swidler & Berlin, Chartered

Martin T. McCue
General Counsel
Linda Kent
Associate General Counsel
United States Telephone Assoc.
900 19th Street, N.W., Suite 800
Washington, D.C. 20006-2105
1255 23rd Street, N.W.

James S. Blaszak
Patrick J. Whittle
Gardner, Carton & Douglas
Attys for Ad Hoc Telecommunications
Users Committee
1301 K Street, N.W.
Suite 900 East
Washington, D.C. 20005

Anne P. Jones
David A. Gross
Sutherland, Asbill & Grennan
Attys for Pactel Corporation
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Howard Monderer

Brian D. Kidney
Pamela J. Riley
Pactel Corporation
2999 Oak Road, MS 1050
Walnut Creek, CA 94569

Kathy L. Shobert
Director Federal Regulatory Affairs
888 16th St., N.W., Suite 600
Washington, D.C. 20006

House Counsel
Local Area Telecommunications, Inc.
17 Battery Place
Suite 1200
New York, NY 10004

Catherine Wang, Esq.

Counsel for Local Area
Telecommunications, Inc.
3000 K Street, N.W.
Washington, D.C. 20007

Brian R. Moir
Fisher, Wayland, Cooper & Leader
International Communications Assoc.
Suite 800
Washington, D.C. 20037-1170

Randolph J. May
Richard S. Whitt
Sutherland, Asbill & Brennan
Attys for Capital Cities/ABC, Inc.
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Sam Antar
Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023

National Broadcasting Company, Inc.
Suite 930, North Office Bldg.
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Heather Burnett Gold
President
Association for Local
Telecommunication Services
1150 Connecticut Avenue, N.W.
Suite 1050
Washington, D.C. 20036

Francine J. Berry
R. Steven Davis
Roy E. Hoffinger
American Telephone & Telegraph Co.

Ellen S. Deutsch
Senior Counsel
Electric Lightwave, Inc.
8100 N.E. Parkway Drive
Suite 200
Vancouver, WA 98662

Joseph P. Markoski
Andrew W. Cohen
Squire, Sanders & Dempsey
Attys for Information Technology
Association of America

Doris S. Freedman, Esq.
Acting Chief Counsel
Barry Pineless, Esq.
Assistant Chief Counsel
Office of Advocacy
United States Small Business
Administration
409 3rd Street, S.W.
Washington, D.C. 20554

Albert Haplin
Melanie Haratunian
Halprin, Temple & Goodman
Suite 1020, East Tower
1301 K Street, N.W.
Washington, D.C. 20005

Steven J. Hogan
President
LinkUSA Corporation
230 Second Street S.E.
Suite 400
Cedar Rapids, Iowa 52401

Martin W. Bercovici
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001